

## **REMARKS**

### **Status of the Claims**

Claims 38 and 78-90 are pending in the application. Claim 38 is allowable. Claims 1-37, 39-77, and 91-97. However, claims 78-90 remained withdrawn from further consideration on the grounds that they “do not includes all the limitations of the allowable generic linking claims as required by 37 C.F.R. § 1.141.” (*Ex parte Quayle* Action, page 1).

### **Rejoinder**

Applicants made various attempts to contact Examiner Parkin by telephone to discuss this Action. Applicants also contacted the examiner’s supervisor as listed on the Action (James Housel). Mr. Housel indicated he was not the supervisor of this application and said he would refer the matter to the proper person. However, the undersigned was not contacted in regard to the requests for discussion.

For the reasons noted in the previously response, claims 78-90 all depend from and therefore include all the limitations of allowable claim 38. Thus, contrary to the Office’s assertion, claims 78-90, drawn to methods of using the expression cassettes of allowable claim 38, should be rejoined per the Commissioner’s Notice in the Official Gazette of March 26, 1996, entitled “Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b).”

The Examiner has asserted that no generic linking claim was allowed citing to 37 CFR 1.141(a); however, as set forth in MPEP 821.04(a), generic linking claims are relevant when the allowed claims and the withdrawn claims are directed to species that are both products or both processes. In this case as covered by 37 CFR 1.141(b), the allowed and the withdrawn claims are not species, but rather the allowed claims are to a product and the withdrawn claims are to a process of using the product. MPEP 821.04(b) indicates:

“[I]f applicants elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must depend from or otherwise require all the limitations of an allowable product claim for that process invention to be rejoined.”

Claim 38 is an allowed product claim. Claims 78-90 are process claims that depend from allowed claim 38.

Applicants therefore respectfully request that the Examiner rejoin claims 78-90 as they are process claims directed to use of an allowed product.

**CONCLUSION**

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact the undersigned.


The Commissioner is hereby authorized to charge any fees and credit any overpayment of fees which may be required under 37 C.F.R. §1.16, §1.17, or §1.21, to Deposit Account No. 18-1648.

Please direct all further written communications regarding this application to:

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Respectfully submitted,

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